

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JEREMY RODRIGUEZ-ORTEGA AND
JOSHUA RODRIGUEZ,

Plaintiff,

v.

No. 1:21-cv-01129-JCH-KK

DAVID RICH, KENNETH LUCERO,
in their official and individual capacities,
L. THERESA PADILLA, in her individual capacity,
AND NEW MEXICO DEPARTMENT OF HEALTH

Defendants.

**MOTION FOR LEAVE TO FILE A SURREPLY TO PLAINTIFFS' REPLY IN
SUPPORT OF THEIR STATEMENT OF APPELLATE ISSUES**

Defendants David Rich and Kenneth Lucero in their official and individual capacities, and the New Mexico Department of Health (“DOH”) (collectively, “DOH Defendants”), respectfully move by and through counsel, Miller Stratvert P.A. (Paula G. Maynes and Andrew Q. Varan), for leave to file a surreply to Plaintiff’s Reply in Support of their Statement of Appellate Issues [Doc. 172]. “Generally, the nonmoving party should be given an opportunity to respond to new material raised for the first time in the movant’s reply.” *Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005) (internal quotation marks and citations omitted). “‘Material,’ for purposes of this framework, includes both new evidence and new legal arguments.” *Id.* (internal quotation marks and citations omitted).

In their Reply in Support of their Statement of Appellate Issues, Plaintiffs raise several new factual allegations, including allegations surrounding Co-Defendant Teresa Padilla’s role in the New Mexico State Personnel Board’s (“SPO”) denial of both Plaintiffs’ administrative appeals. Plaintiffs now allege that Ms. Padilla began working for SPO in May 2021, though their original

Statement of Appellate Issues contended she worked for SPO as of September 2021. [Doc. 172-1; Doc. 139, p. 38] Plaintiffs' Reply in Support of their Statement of Issues presents new factual allegations that directly contradict the facts identified in Plaintiffs' Statement of Appellate Issues [Doc. 139, p. 38]. DOH Defendants do not request leave to file a surreply lightly. *See Green*, 420 F.3d at 1196. Undersigned counsel can adequately address merely novel arguments or novel facts from the nine new exhibits to this administrative appeal at a hearing, but Plaintiffs' presentation of contradicting facts warrants additional, concise briefing from DOH Defendants.

Plaintiffs oppose this motion, as they did not respond to requests for their position. Co-Defendant Padilla does not oppose this motion.

WHEREFORE, DOH Defendants respectfully request leave of Court to file a brief surreply to Plaintiff's Statement of Appellate Issues to address Plaintiffs' novel factual allegations and legal arguments and any other relief the Court deems just and proper.

Respectfully submitted,

MILLER STRATVERT P.A.

By: /s/ Paula G. Maynes

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of March, 2024, I filed the foregoing pleading electronically through the CM/ECF Filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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By: /s/ Paula G. Maynes
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